82-1367

No.

Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

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ROADWAY EXPRESS, INC.

*Petitioner,*

v.

LAWRENCE G. WARREN,

*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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February 14, 1983

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## QUESTIONS PRESENTED

1. Whether the Georgia courts unconstitutionally failed to give full faith and credit to Tennessee law in awarding respondent Georgia workers' compensation benefits when he had already received such benefits under Tennessee law, which constitutes an irrevocable election to proceed under that state's law.

2. Whether the Georgia courts acted unconstitutionally in awarding Georgia workers' compensation benefits to respondent since Georgia does not have a significant contact or aggregation of contacts with the parties and the occurrence or transaction involved in this case.

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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### OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982). There is no reported opinion of the Supreme Court of Georgia, which denied petitioner's application for certiorari on November 16, 1982.

### STATEMENT OF JURISDICTION

The opinion of the Georgia Court of Appeals was entered on September 16, 1982. Petitioner's motion for rehearing was denied by the Georgia Court of Appeals on

October 6, 1982. Petitioner subsequently filed its application for certiorari to the Georgia Supreme Court, which was denied on November 16, 1982. Copy of the opinion of the Georgia Court of Appeals and other pertinent opinions and orders are set forth in Appendix A, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions involved in this case are set forth in Appendix B, *infra:* U.S. Const. art. IV, §1; U.S. Const. amend. XIV, §1; Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411); Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404); Tenn. Code Ann. §50-914; Tenn. Code Ann. §50-917; Tenn. Code Ann. §50-1005; and Tenn. Code Ann. §50-1007.

## STATEMENT OF THE CASE

### I. PROCEEDINGS BELOW.

Lawrence G. Warren (hereinafter "Claimant") was injured while working for Roadway Express, Inc. on October 20, 1978 in Indiana. Claimant had been living in and working out of Tennessee. He elected to come under the Workmen's Compensation Laws of the State of Tennessee. An agreement was entered into on November 2, 1978, and it was filed and executed with the Workmen's Compensation Division of the Department of Labor of Tennessee. Benefits were paid pursuant to this agreement for payment of compensation under Tennessee law until October 12, 1979. Thereafter, Claimant filed a workers' compensation claim in Georgia for the very same accident. A hearing was held and Administrative Law Judge H. Grady

Almand, Jr. of the Georgia Board of Workers' Compensation awarded Claimant benefits on August 6, 1980. Roadway Express, Inc. appealed this award to the Full Board of Workers' Compensation of Georgia which thereafter affirmed the award on January 8, 1981. Roadway Express, Inc. properly appealed the Full Board award to the Superior Court of Fulton County, Georgia. By order dated December 1, 1981, the Honorable Sam Phillips McKenzie, Fulton Superior Court Judge, affirmed the decision of the Georgia Board of Workers' Compensation.

On December 31, 1981, Roadway Express, Inc. filed its application for appellate review to the Supreme Court of Georgia. By order dated January 7, 1982, the Supreme Court of Georgia ordered that this application be transferred to the Court of Appeals of Georgia. The Court of Appeals granted Roadway's application for appellate review by order dated January 26, 1982. Pursuant to this order, Roadway Express, Inc. filed its notice of appeal to the Court of Appeals on January 29, 1982.

The Court of Appeals of Georgia issued its opinion on September 16, 1982, which upheld the exercise of jurisdiction of the Georgia Board of Workers' Compensation over this claim and affirmed the order of the Superior Court of Fulton County, Georgia. Roadway Express, Inc. timely filed a motion for rehearing which was denied by the Court of Appeals on October 6, 1982. Roadway Express, Inc. subsequently filed its application for certiorari to the Supreme Court of Georgia on October 26, 1982. Roadway's application for certiorari was denied by the Supreme Court of Georgia on November 16, 1982.

## II. STATEMENT OF FACTS.

Claimant was first employed as an over the road truck driver by Roadway Express, Inc. on March 23, 1963. At

that time, Claimant operated out of Atlanta, Georgia. In 1967, Claimant was injured in an on the job accident and received workers' compensation benefits from 1967 until 1971. He did not work for Roadway Express during this four-year period of time. During the same period, Roadway Express changed its method of operation from two drivers per truck to one, and when Claimant was reemployed after his disability ended he was given a choice of different terminals to work out of. Claimant had the choice of continuing to operate out of Atlanta, Georgia or of operating out of other designated localities. Claimant's choice of operating out of Nashville, Tennessee was honored.

In 1971, when Claimant's physical disability from his 1967 on the job accident ended, he was required to take a physical examination in Nashville, Tennessee as a prerequisite to reemployment with Roadway. This physical examination was required by the Interstate Commerce Commission for over the road drivers. From 1971 on, claimant not only worked out of the Nashville terminal but also moved his family and residence to Tennessee. On the date of the accident (October 20, 1978) and for two years before, Claimant exclusively drove the Nashville to Chicago route, a run on which he had voluntarily bid.

Claimant sustained the injury in question on October 20, 1978 in the State of Indiana while he was on his regular run to Chicago from Nashville. Claimant signed workers' compensation forms providing for the voluntary payment of workers' compensation benefits under the Tennessee law and admitted accepting benefits under the Tennessee Workmen's Compensation Statute. These forms were approved by the Workmen's Compensation Board in Tennessee. Benefits under Tennessee workers' compensation law ceased on October 12, 1979 when Dr. Raymond E.

Gilmer, Jr. stated that Claimant was no longer disabled and should return to work.

### III. FEDERAL CONSTITUTIONAL QUESTIONS RAISED BELOW.

Federal constitutional questions were first raised by Roadway Express, Inc. at the initial evidentiary hearing before Administrative Law Judge H. Grady Almand, Jr. of the Georgia Board of Workers' Compensation on March 11, 1980. Counsel for Roadway Express, Inc. made an oral motion to dismiss at the evidentiary hearing, with one of the grounds of the motion to dismiss stated at page 66 of the transcript of the hearing as follows: ". . . under the full faith and credit doctrine of the United States Constitution, we are entitled to full faith and credit of the Tennessee proceedings which are in evidence." Federal constitutional objections to the exercise of jurisdiction by Georgia over this workers' compensation claim were also raised in the letter brief from counsel for Roadway Express, Inc. to Administrative Law Judge Almand dated June 6, 1980. Judge Almand's award dated August 6, 1980 was the initial ruling in this workers' compensation claim, and he decided that the United States Constitution did not preclude Georgia from granting a second award of workers' compensation benefits to Claimant.

Federal constitutional issues under U.S. Const. art. IV, §1 and U.S. Const. amend. XIV, §1 were raised by Roadway Express, Inc. in its appeal of Judge Almand's award and all subsequent appeals of this workers' compensation case as set forth in the following documents filed by Roadway Express, Inc., which are a part of the record: (1) Notice of Appeal to the Full Board of Workers' Compensation of Georgia filed on September 5, 1980; (2) Brief of

Roadway Express, Inc. on appeal to the Full Board of Workers' Compensation of Georgia filed on September 22, 1980; (3) Supplemental Brief of Roadway Express, Inc. on appeal to the Full Board of Workers' Compensation of Georgia filed on October 24, 1980; (4) Roadway Express, Inc.'s Notice of Appeal to the Superior Court of Fulton County, Georgia filed on February 5, 1981; (5) Brief of Roadway Express, Inc. on appeal to the Superior Court of Fulton County, Georgia filed on July 10, 1981; (6) Application for Appellate Review filed on December 31, 1981 in the Supreme Court of Georgia; (7) Notice of Appeal to the Supreme Court of Georgia filed on December 31, 1981; (8) Notice of Appeal to the Court of Appeals of Georgia filed on January 29, 1982; (9) Motion for Reconsideration of Dismissal of Appeal of Appellant Roadway Express, Inc. filed in the Supreme Court of Georgia on April 16, 1982; (10) Brief of Appellant Roadway Express, Inc. on appeal to the Court of Appeals of Georgia filed on May 5, 1982; (11) Motion for Rehearing on appeal to the Court of Appeals of Georgia filed on September 27, 1982; and (12) Application for Certiorari to the Supreme Court of Georgia filed on October 26, 1982.

The Full Board of Workers' Compensation of Georgia entered its award on January 8, 1981 whereby it made the findings and conclusions of the Administrative Law Judge its findings and conclusions. The Honorable Sam Phillips McKenzie, Fulton Superior Court Judge, issued his order on December 1, 1981 affirming the decision of the Georgia Board of Workers' Compensation. The decision of the Court of Appeals of Georgia issued on September 16, 1982 addressed the Federal constitutional questions raised by Roadway Express, Inc. and held that the United States Constitution did not bar Claimant from seeking benefits under the Georgia Workers' Compensation Act. The Su-

preme Court of Georgia did not pass on the constitutional questions raised by Roadway Express, Inc. inasmuch as that Court denied the application for certiorari filed by Roadway Express, Inc. on November 16, 1982. Copy of all opinions and orders of the Georgia Board of Workers' Compensation and the Georgia appellate courts concerning the constitutional questions raised by Roadway Express are contained in Appendix A, *infra.*

## ARGUMENT AND CITATION OF AUTHORITY

The Georgia courts have based their exercise of jurisdiction over this workes' compensation claim in Georgia upon Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411), which states in pertinent part the following:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependent shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: . . ."

Roadway Express, Inc. respectfully submits that the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this claim was unconstitutional under the circumstances of this case. In allowing the Georgia Board of Workers' Compensation to exercise jurisdiction over this workers' compensation claim, the Georgia courts failed to give the required full faith and credit effect to the

holding of Tennessee law that Claimant's receipt of workers' compensation benefits under that state's law is an irrevocable election to proceed under Tennessee law, thus precluding a second award of Georgia workers' compensation benefits in this case. Authority from this Court, the most recent case being *Thomas v. Washington Gas Light Company,* 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980), holds that Georgia must give full faith and credit to the "irrevocable election doctrine" of Tennessee law. Secondly, the facts indicate that Georgia has no significant contact or aggregation of contacts with the parties and the occurrence or transaction involved in this case, with the result that application of Georgia law in this workers' compensation case is unconstitutional under this Court's decisions in *Allstate Insurance Company v. Hague,* 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981); *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct. 338, 74 L.Ed. 926 (1930); and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129, 81 L.Ed. 106 (1936). Review by this Court is necessary since the decision of the Court of Appeals of Georgia affirming the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this case is in direct conflict with constitutional authority set forth in decisions of this Court.

## I.

### THE GEORGIA COURTS ERRED IN FAILING TO GIVE FULL FAITH AND CREDIT TO THE PRIOR AWARD OF COMPENSATION ENTERED IN THE STATE OF TENNESSEE.

*Tidwell v. Chattanooga Boiler & Tank Company,* 163 Tenn. 420, 43 S.W.2d 221 (1931), and *True v. Amerail Corporation,* 584 S.W.2d 794 (Tenn. 1979) clearly hold that, *as a matter of Tennessee law,* a workers' compensation claimant makes an irrevocable election to proceed under the workers' compensation law of the state in which

he first receives benefits. The Full Faith and Credit Clause of the United States Constitution (U.S. Const. art IV, § 1) requires that the Georgia Board of Workers' Compensation give full faith and credit to the prior award of compensation entered into in the State of Tennessee. Accordingly, the Georgia Court of Appeals erred in affirming the Board's exercise of jurisdiction in this case as it could not constitutionally do so.

The requirements traditionally cited for the invocation of the Full Faith and Credit Clause of the United States Constitution are, first, the workers' compensation award must be the exclusive remedy in the state where it is rendered and second, the award must be final in the state where it is rendered. *Pettus v. American Air Lines, Inc.*, 587 F.2d 627 (4th Cir. 1978), *cert. denied*, 444 U.S. 883 (1979); *Gasch v. Britton*, 202 F.2d 356 (D.C. Cir. 1953); *Nagle v. Ringling Bros. and Barnum & Bailey Combined Shows, Inc.*, 386 F. Supp. 439 (S.D. Tex. 1974), *aff'd*, 529 F.2d 1350 (5th Cir. 1976). The unmistakable language of the doctrine of election expressed by the courts of Tennessee is that receipt of benefits under one state's law is an irrevocable election to proceed under that state's law. The record shows that claimant entered into an agreement under the workers' compensation laws of Tennessee and received benefits under that state's law. Under Tennessee law, receipt of those benefits is Claimant's exclusive remedy and his election of that remedy is irrevocable and final.

The most recent decision of this Court concerning the effect of the Full Faith and Credit Clause in workers' compensation proceedings is *Thomas v. Washington Gas Light Company*, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980). An analysis of this decision supports the conclusion in this case that the Georgia Board of Workers' Compensation must give full faith and credit to the Ten-

nessee compensation award and not exercise jurisdiction in this case.

There was no majority opinion in *Thomas*. However, the plurality opinion of four Justices advocated a balancing of interests test to determine whether a second governmental entity could constitutionally provide benefits to a workers' compensation claimant. By using this test, the plurality was persuaded that, under the facts of *Thomas,* the governmental interest of the second governmental entity (the District of Columbia) in providing benefits to *its own residents* outweighed the governmental interest of the State of Virginia in protecting its employers from excessive liability. A balancing of the state interests of Tennessee and Georgia in this case indicates that Tennessee has a much greater interest in application of its law than Georgia has in ignoring Tennessee's irrevocable election doctrine. Although Claimant has since moved to Florida, he was a Tennessee resident at the time of his accident and his work for Roadway Express at that time was exclusively between Nashville and Chicago. Claimant has not been a resident of Georgia since 1971. Therefore, Georgia does not have any governmental interest in him, as did the District of Columbia in the *Thomas* case. Claimant would not have any entitlement to governmental benefits in Georgia and was not even in transit through Georgia when the accident occurred. Roadway Express certainly has a right and interest to be governed by the law of Tennessee in this case, the law which Claimant originally chose to be governed by. Roadway Express and Claimant agreed to be governed by Tennessee law in this case by executing forms for payment of benefits in Tennessee, and their agreement to be bound by Tennessee law should not have been thwarted by the Georgia courts.

Additionally, the State of Tennessee certainly has a valid interest in not having its law thwarted by the courts

of the State of Georgia. There are several differences in compensation law in Georgia and Tennessee – *e.g.*, Tennessee has a different compensation rate [compare Tenn. Code Ann. §50-1007 and Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404)], Tennessee has a limit on the total amount of compensation which may be awarded while Georgia does not (Tenn. Code Ann. §50-1005), and Tennessee law provides for subrogation of the employer in a tort action against a third party while Georgia does not (Tenn. Code Ann. §50-914). These provisions of Tennessee law are more favorable to the employer than Georgia law, and the plurality in *Thomas* recognized that a state has a valid interest in placing a limit on the potential liability of companies that transact business in the state. The fact that Georgia provides more liberal compensation benefits is the logical reason that Mr. Warren chose to seek benefits in Georgia. He applied for Georgia benefits only after his Tennessee benefits were terminated on the basis of a change in condition, and his appropriate remedy is to seek benefits for a change in condition for the worse in Tennessee if he contends that he is still disabled. In short, an analysis of the governmental interests of Georgia and Tennessee in this case indicates that Georgia has no governmental interest in Claimant and Tennessee has a great governmental interest in having its law applied. Therefore, the plurality opinion in *Thomas* indicates that Georgia should have given full faith and credit to the Tennesee doctrine of irrevocable election and not awarded Georgia workers' compensation to Claimant.

The other opinions in *Thomas* also indicate that Georgia's exercise of jurisdiction in this workers' compensation case is unconstitutional under the Full Faith and Credit Clause. While the plurality rationale might be construed as indicating that a workers' compensation award is not in all instances entitled to *res judicata* effect, the con-

curring opinion of Justice White, joined by Chief Justice Burger and Justice Powell, states that a workers' compensation award should be entitled to *res judicata* effect under the Full Faith and Credit Clause. They concurred in the judgment only because the law of Virginia, in which the first compensation award was granted, lacked "unmistakable language" to preclude a subsequent award in another state. The dissenting opinion of Justice Rehnquist also provides that a workers' compensation award should be entitled to *res judicata* effect under the Full Faith and Credit Clause. The concurring opinion of Justice White and the dissenting opinion of Justice Rehnquist represent the opinions of five of the nine Justices. Therefore, contrary to the holding of the Georgia Court of Appeals in the instant case, a majority in *Thomas* did not hold that a compensation award may be treated differently than a judgment in a civil action in a court of law under the Full Faith and Credit Clause. Tennessee law does have "unmistakeable language" precluding a subsequent award in another state. Under Tennessee's "irrevocable election doctrine,"Claimant has irrevocably elected for Tennessee law to apply and cannot subsequently receive benefits under Georgia law. In the various opinions in *Thomas,* this Court indicated that a majority of the Justices would give *res judicata* effect to the award of benefits in Tennessee and its irrevocable election effect. The Georgia Court of Appeals cannot give Georgia an improper preference over Tennessee law. The Tennessee doctrine of irrevocable election could not be more clear, and it is unconstitutional for Georgia to so cursorily disregard the *res judicata* effect of Claimant's initial choice to receive workers' compensation benefits in Tennessee.

The Georgia courts also failed to give the necessary *res judicata* effect to Claimant's acceptance of benefits under

Tennessee law in holding that the statutory requirements for the Georgia Board's exercise of jurisdiction had been met. The first requirement set forth in Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411) for the Georgia Board of Workers' Compensation to exercise jurisdiction is that the contract of employment must have been made in Georgia. In order for Mr. Warren to obtain benefits under Tennessee law, it was required that either the contract for hire be made in Tennessee or that his employment was principally located within Tennessee. Tenn. Code Ann. §50-917. The majority of Claimant's duties for Roadway Express occurred outside of Tennessee on his run to Chicago. Therefore, he could only be eligible for Tennessee benefits if his employment contract was made in Tennessee. By necessity, his acceptance of benefits under Tennessee law constitutes a finding that his contract of employment was entered into in Tennessee. The Supreme Court of Tennessee has held that a workers' compensation claimant cannot repudiate the obligations of a compensation contract in one action while claiming the benefits of that contract in another action. *Tidwell v. Chattanooga Boiler & Tank Company,* 163 Tenn. 420, 43 S.W.2d 221, 223 (1931). Georgia cannot constitutionally ignore Claimant's receipt of benefits in Tennessee and find that his contract of employment was entered into in Georgia. The *res judicata* effect mandated by *Thomas* indicates that even under the terms of its own statute Georgia was not authorized to exercise jurisdiction in this workers' compensation claim.

Accordingly, by applying each of the separate opinions in *Thomas* to the facts and circumstances of the instant case, it is clear that Georgia was required to give full faith and credit to the Tennessee doctrine of irrevocable election and not award Georgia workers' compensation benefits to

Claimant. Georgia further failed to give full faith and credit to Tennessee law by deciding that the requirements of its own statute for the exercise of jurisdiction over this workers' compensation case had been met. It was therefore error for the Georgia Court of Appeals to affirm the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this case, and it is respectfully submitted that this Court should grant the writ of certiorari and reverse the decision of the Georgia Court of Appeals which affirmed the award of Georgia workers' compensation benefits to Claimant.

## II.

**THE GEORGIA COURTS ERRED IN FAILING TO RECOGNIZE CONTROLLING PRECEDENT FROM THIS COURT WHICH HOLDS THAT THE GEORGIA BOARD OF WORKERS' COMPENSATION CANNOT CONSTITUTIONALLY EXERCISE JURISDICTION IN THIS CASE SINCE GEORGIA DOES NOT HAVE ANY SIGNIFICANT CONTACT OR AGGREGATION OF CONTACTS WITH THE PARTIES AND THE OCCURRENCE OR TRANSACTION INVOLVED.**

In affirming the Board's exercise of jurisdiction, the Georgia Court of Appeals failed to give proper deference to the principle set forth by this Court in the decision of *Allstate Insurance Company v. Hague,* 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981) that:

> "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interest, such that choice of its law is neither arbitrary or fundamentally unfair." 101 S.Ct. at 640.

The *Hague* decision and prior decisions of this Court in *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct.

338, 74 L.Ed. 926 (1930) and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129, 81 L.Ed. 106 (1936) indicate that application of Georgia law under Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411) is unconstitutional under the facts of this case.

In *Dick,* suit was brought in Texas against a Mexican insurance company and a New York reinsurer under an insurance policy which had been issued in Mexico to cover a Mexican risk. Mr. Dick was a citizen of Texas. The Texas court construed a limitation of actions clause in the policy under Texas law and held that the provision was void. This Court reversed, holding that application of Texas law was unconstitutional as denying due process in light of the absence of any significant contact of the subject occurrence or transaction with Texas. *Yates* involved a suit brought in Georgia on a life insurance policy which had been issued by a Massachusetts corporation in the State of New York for insurance on the life of a New York resident. The suit was brought after the insured had died in New York and his spouse, the beneficiary, had moved to Georgia. Georgia applied its law pertaining to material misrepresentations in application for the policy. This Court reversed, holding that the Georgia court's application of its own law instead of New York law violated the Full Faith and Credit Clause.

*Dick* and *Yates,* whose continued validity was recognized by this Court in *Hague,* indicate that Georgia does not have a significant contact or aggregation of contacts in this case to warrant application of its law. At all times pertinent to the accident involved in this case, Claimant was a resident of Tennessee. From the date of his reemployment with Roadway Express in 1971 Claimant worked out of the Nashville, Tennessee terminal, and on the date of the acci-

dent (October 20, 1978) and for the previous two years he exclusively drove the Nashville to Chicago route. Claimant's accident occurred in the State of Indiana while he was on his regular run to Chicago from Nashville. He initially chose to receive workers' compensation benefits under the laws of his state of residence, Tennessee, and admitted accepting benefits under the Tennessee Workmen's Compensation Statute. The only contact with Georgia in this case is that Claimant was initially employed by Roadway in Georgia in 1963 and operated for Roadway out of Atlanta, Georgia from 1963 until 1967. In light of Claimant's subsequent reemployment by Roadway in Tennessee in 1971 and the fact that he resided in Tennessee and operated out of that state after that date, the mere fact that he lived in Georgia and worked for Roadway Express from 1963 until 1967 does not constitute a sufficient contact with Georgia to allow application of the Georgia Workers' Compensation Act. The Georgia Court of Appeals' choice of Georgia law was therefore unconstitutional.

Under the holding of *Hague,* the Georgia Court of Appeals should have held that Tennessee law and not Georgia law governed Claimant's workers' compensation case. Tennessee law and its "irrevocable election doctrine" would therefore bar this claim for benefits under Georgia law, requiring that the decision of the Georgia Court of Appeals be reversed.

## CONCLUSION

This Court should review this case inasmuch as the Georgia courts have ignored constitutional authority set forth in decisions of this Court. Moreover, this case provides the Court with an opportunity to further clarify the full faith and credit effect of workers' compensation deci-

sions since *Thomas*. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GREENE, BUCKLEY, DeRIEUX & JONES

By: _____

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February 14, 1983

## APPENDIX A
## OPINIONS AND ORDERS RENDERED BELOW

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta Nov 16 1982

Case No. 39298. Roadway Express, Inc. v. Warren

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur.

Very truly yours,

MRS. JOLINE B. WILLIAMS, Clerk

COURT OF APPEALS
of the State of Georgia ATLANTA, October 6, 1982

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

64374. Roadway Express, Inc. v. Lawrence G. Warren

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

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Court of Appeals of the State of Georgia

CLERK OFFICE, ATLANTA, OCT 6 1982

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

CLERK.

COURT OF APPEALS
of the State of Georgia

ATLANTA, January 26, 1982

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

APPLICATION NO. 380 Roadway Express, Inc. v. Lawrence G. Warren

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby granted. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk is directed to include a copy of this order in the record transmitted to the Court of Appeals.
28-1
C-71838

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta January 26, 1982

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk
[signed] Alton Hawk

Applic. No. 1923

SUPREME COURT OF GEORGIA

Atlanta, January 7, 1982

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ROADWAY EXPRESS, INC. V. LAWRENCE G. WARREN

From the Superior Court of Fulton County.

It is ordered that this Application be hereby transferred to the Court of Appeals.

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SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto the day and year last above written.

[signed] Joline B. Will

IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA

| | | |
|---|---|---|
| ROADWAY EXPRESS, INC., | : | |
| Employer/Appellant | : | CIVIL ACTION |
| Vs. | : | FILE NO. C-71838 |
| LAWRENCE G. WARREN, | : | |
| Employee/Appellee | : | |

ORDER

The above-styled matter came before this Court on November 12, 1981 for a hearing on the Employer's appeal from a decision of the Georgia State Board of Workers' Compensation dated January 8, 1981, which affirmed the Administrative Law Judge's award of benefits to the Employee/Appellee.

After having heard argument of counsel, and after careful consideration of all briefs and the entire file of record, the Court finds that there is evidence to support the decision of the Board; therefore, said decision is hereby affirmed.

IT IS SO ORDERED.

This 1 day of December, 1981.

[signed] Sam Phillips McKenzie
SAM PHILLIPS McKENZIE
JUDGE, SUPERIOR COUIRT
ATLANTA, JUDICIAL CIRCUIT

WC 5510

STATE BOARD OF WORKERS' COMPENSATION
1800 Peachtree Street, N.W.
ATLANTA, GEORGIA 30309

NOTICE OF AWARD

CLAIM NO. 255-40-7275 CASE OF Lawrence G. Warren
INJURY DATE October 20, 1978 DATE January 8, 1981

| | |
|---|---|
| Lawrence G. Warren<br>630 Spring Oaks Boulevard<br>Altamonta, Florida | Employee |
| Roadway Express<br>Post Office Box 471<br>Akron, Ohio 44309 | Employer/Self-Insured |
| Noble E. Pepper, Sr.<br>4067 Lakeparkway<br>Hermitage, Tennessee 37076 | For Claimant |
| John W. Winborne, III<br>3100 Peachtree Summit<br>Atlanta, Georgia 30308 | For Claimant |
| Alfred B. Adams, III<br>Daniel A. Angelo<br>Post Office Box 57006<br>Atlanta, Georgia 30303 | For Defendants |

This claim came before the Board on October 6, 1980, for review of the award of Judge Almand.

Upon de novo consideration of all evidence, the Baord makes the findings and conclusions of the Administrative Law Judge its findings and conclusions.

AWARD

The award of Judge Almand, dated August 6, 1980, is made the award of the Board.

IT IS SO ORDERED, this the 8th day of January, 1981. Concurring: Chairman E. Earl Mallard and Director James W. Paris.

STATE BOARD OF WORKERS' COMPENSATION

[signed] Don L. Knowles
DON L. KNOWLES, DIRECTOR

Dissenting:
:aa

**Opinion of Court of Appeals of Georgia reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982)**

64374. ROADWAY EXPRESS, INC. v. WARREN.

POPE, Judge.

This is a discretionary appeal by Roadway Express, Inc. from the order of the superior court below affirming the award of workers' compensation benefits to appellee Lawrence G. Warren.

Appellee was employed by appellant in 1963 as a truck driver operating out of Atlanta. In 1967 appellee was injured in an accident in the course of his employment. He obtained workers' compensation from the State of Tennessee from 1967 to 1971, during which time he did not work for appellant. Appellee returned to work for appellant in 1971 as a truck driver operating out of Nashville, Tennessee. In 1978 appellee was again injured in an accident, this time in Indiana. He applied for and received Tennessee workers' compensation until October, 1979. Appellee thereafter applied for workers' compensation from Georgia, and it is the award of those benefits which appellant here challenges.

1. Because the injury-producing accident occurred outside of Georgia, the controlling jurisdictional statute is Code Ann. § 114-411. This section provides that a claimant is entitled to workers' compensation in Georgia if he was injured in an accident occurring outside the state which was such that it would entitle him or his dependents to compensation had it happened within the state. The section further provides a number of limitations: (1) The contract of employment must have been made in Georgia; (2) The employer's place of business or the employee's residence must be in Georgia; (3) The contract of employment

must not be expressly for service exclusively outside Georgia; and (4) If the employee has received compensation from another state for the injuries sustained in the accident, the sum of the compensation received from the other state together with the compensation subsequently awarded in Georgia may not exceed the maximum compensation allowed under the Georgia Workers' Compensation Act. Code Ann. § 114-411.

Appellant contends that none of the jurisdictional requirements of Code Ann. § 114-411 have been met and therefore the Board has erred in exercising jurisdiction. We, of course, accord considerable deference to the Board and it is under this limited standard of review that we judge appellant's contentions. See Code Ann. § 114-710 and annotations thereto.

2. Appellant first challenges the finding that the contract of employment was made in Georgia. It is undisputed that appellee became employed by appellant in 1963 in Georgia. Appellant, however, claims that appellee's return to work in 1971, after a four year break, was pursuant to a new contract made not in Georgia, but in Tennessee. Alternatively, appellant asserts that a novation of the 1963 contract occurred in 1971 in Tennessee. Appellant bolsters its claim with the argument that appellee's acceptance of Tennessee workers' compensation benefits constitutes an admission by appellee that his employment since 1971 was pursuant to a contract entered into in Tennessee.

Appellee, on the other hand, draws our attention to appellant's own employment form indicating appellee's employment status to be "return to work from extended sick leave" and "reinstatement" rather than "new hire" or "re-hire." Additionally, appellee points out that he never lost any seniority, despite the four years out of work.

Our review of the record convinces us that the contentions of both parties have merit. There is evidence supporting both positions.

In situations such as this, the "any evidence" rule mandates that we respect the findings made by the Board. *Lockhart v. Liberty Mut. Ins. Co.*, 141 Ga. App. 476 (1) (233 SE2d 810) (1977); *Howard Sheppard, Inc. v. McGowan*, 137 Ga. App. 408 (224 SE2d 65) (1976); *Johnson v. Great Southern Trucking Co.*, 101 Ga. App. 472 (114 SE2d 209) (1960). Therefore, regardless of the fact that the Board arguably could have ruled in favor of appellant, we hold that the evidence supports the finding that appellee's employment with appellant was pursuant to the 1963 contract made in Georgia.

3. Appellant's contentions regarding the second and third conditions of Code Ann. § 114-411 also fail under the "any evidence" test. Appellant's contention that it did not have a place of business in Georgia is defeated by its own stipulation that it was "a qualified self-insurer in Georgia, generally subject to the Act in Georgia" and, in addition, testimony authorizing the conclusion. See *Aetna Cas. &c. Co. v. Suits*, 150 Ga. App. 35 (256 SE2d 645) (1979).

Appellant's final jurisdictional attack is the contention that appellee was employed expressly for service exclusively outside of Georgia. Although appellant has ably shown that appellee's driving was nearly entirely outside of the state, this falls short of "exclusively" as provided in § 114-411.

4. The next challenge presented by appellant is that Georgia law was erroneously applied below. Appellant asserts that, under conflict of laws principles, Tennessee law should have been applied. "Conflict of laws . . . constitutes that field of law which determines whether foreign law should or should not be given effect or enforced." 15A CJS 367, Conflict of Laws, § 1(2). "The laws of other

states have no force in Georgia except on principles of comity and so long as their enforcement 'is not contrary to the policy of this State.' [Code Ann.] § 102-110(9)." Gulf Collateral, Inc. v. Morgan, 415 F.Supp. 319, 321 (S.D. Ga. 1976); *Shore Acres Properties, Inc. v. Morgan,* 44 Ga. App. 128 (4) (160 SE 705) (1931).

The last clause of Code Ann. § 114-411 provides that "if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." This statute contemplates the possibility of a workers' compensation award in Georgia subsequent to an award in another state. Georgia law is thus in accord with the Restatement position: "Relief may be awarded under the workmen's compensation statute of a State of the United States, although the statute of a sister State also is applicable." 1 Restatement, Second, Conflict of Laws § 182. "Generally speaking, an award already had under the compensation act of one state will not bar an award under an applicable act of another state which has an adequate interest in the subject matter, but the amount paid on the first award may be credited on the second award." 99 CJS 148, Workmen's Compensation, § 22b; Industrial Commission v. McCartin, 330 U.S. 622 (67 SC 886, 91 LE 1140) (1947).

Appellant relies on two Tennessee cases holding that when a choice of law is available and the claimant chooses the law of another state, he has made an irrevocable election and cannot later apply for compensation under Tennessee law. True v. Amerail Corp., 584 SW2d 794 (Tenn. 1979); Tidwell v. Chattanooga Boiler &c. Co., 163 Tenn. 420 (43 SW2d 221) (1931). We can readily see Tennessee's interest in preventing a party from seeking to obtain benefits under Tennessee law after the party has been

awarded benefits in another state for the same injury. We do not, however, see any significant interest on the part of Tennessee in preventing Georgia from giving one of its (Tennessee's) residents a supplemental compensation award after the resident has received some compensation from Tennessee. Even if Tennessee's interest in the latter case may be considered to be significant, our legislature has spoken to the significance of Georgia's interest in this situation in the language of Code Ann. § 114-411. That section, as explained supra, provides for supplemental awards so long as the sum awards from Georgia and the other state do not exceed the maximum allowed by the Georgia act. We conclude, therefore, that the Georgia legislature intended the Georgia Workers' Compensation Act to apply when jurisdiction is invoked under Code Ann. § 114-411, and general conflict of laws principles do not require the State Board of Workers' Compensation or the courts of this state to apply any other law besides the Georgia Workers' Compensation Act in proceedings under that section. See *Security Ins. Group v. Plank*, 133 Ga. App. 815(2) (212 SE2d 471) (1975).

5. Appellant also contends that appellee was barred from recovery in Georgia under the Full Faith and Credit Clause of the United States Constitution. Appellant argues that our State Board of Workers' Compensation was required to have given full faith and credit to the Tennessee decision which found appellee no longer entitled to workers' compensation benefits.

In this case, appellee received Tennessee workers' compensation benefits for approximately one year. These benefits ceased when appellee was determined to be no longer disabled under Tennessee law. Is this Tennessee decision entitled to full faith and credit in Georgia so as to bar recovery under this state's Workers' Compensation Act? We are not persuaded that the relevant case law, applying the Full Faith and Credit Clause, requires such a

result. In our view, the more reasonable interpretation is that the Georgia Board is not precluded from applying the Georgia Workers' Compensation Act when jurisdiction has been properly invoked thereunder, notwithstanding an award properly made in a sister state. The United States Supreme Court is in general agreement with this position.

In Pacific Employers Ins. Co. v. Industrial Accident Commission, 306 U.S. 493 (59 SC 629, 83 LE 940) (1939), the issue presented was whether the Full Faith and Credit Clause precluded California from applying its own workers' compensation act, instead of the Massachusetts act, where a Massachusetts employee of a Massachusetts employer was injured in California in the course of his employment. 306 U.S. at 497. The Court opined that to the extent California would be required to apply the conflicting Massachusetts law, "it must be denied the right to apply in its own courts its own statute, constitutionally enacted in pursuance of its policy to provide compensation for employees injured in their employment within the state. It must withhold the remedy given by its own statute. . . . We cannot say that the full faith and credit clause goes so far." 306 U.S. at 501. While the case itself is distinguishable from the case at bar, the underlying reasoning is apposite. The case follows, and reaffirms, the case of Alaska Packers Assn. v. Industrial Accident Commission, 294 U.S. 532 (55 SC 518, 79 LE 1044) (1935). In that case, the issue was whether California could apply its workers' compensation act to the claim for compensation by a non-resident alien who contracted in California for employment in Alaska and was injured in the latter state. The Court held that California could apply its own law. 294 US. at 550; see generally id. at 540-50. The Court determined that the California act did not purport to have any extraterritorial effect, but was designed to provide a remedy for injuries received in the course of employment entered into within the state, wherever they may occur. Id. at 540. Compare Bradford Elec. Light Co. v. Clapper, 286

U.S. 145 (52 SC 571, 76 LE 1026) (1932 ), which is fully reviewed in Alaska Packers Assn., supra. Compare also Industrial Commission v. McCartin, supra, with Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (64 SC 208, 88 LE 149) (1943). See also Carroll v. Lanza, 349 U.S. 408 (75 SC 804, 99 LE 1183) (1954).

Most of these cases were re-examined by the Supreme Court in Thomas v. Washington Gas Light Co., 448 U.S. 261 (100 SC 2647, 65 LE2d 757) (1980). In that case, a resident of the District of Columbia, who had been hired in the District of Columbia by a firm principally located there, was injured on the job in Virginia. He applied for and received workers' compensation benefits from Virginia. He later applied for and was awarded supplemental benefits from the District of Columbia, but the decision was reversed by the United States Court of Appeals for the Fourth Circuit. The Supreme Court reversed the Fourth Circuit, holding (in a divided opinion) that the Full Faith and Credit Clause did not preclude the supplemental award of benefits.

While these cases are factually distinguishable from the case at bar, we find them analogous. We further find that these cases are in general agreement with the Restatement position. See also Allstate Ins. Co. v. Hague, 449 U.S. 302 (101 SC 633, 66 LE2d 521) (1981). Accordingly, we conclude that the Full Faith and Credit Clause did not bar appellee's claim for benefits under the Georgia Workers' Compensation Act.

6. Appellant also contends: "By not treating the prior award of compensation entered into in Tennessee as though it were a final judgment entered by a court of competent jurisdiction, the State Board of Workers' Compensation unconstitutionally treated a compensation award differently than a judgment entered in a civil action in a court of law. As such, litigants in a [workers'] compensation matter and litigants in a civil court matter have been

treated differently." This contention has been resolved adversely to appellant by the United States Supreme Court in Thomas v. Washington Gas Light Co., supra. See generally 4 Larson, Workmen's Compensation Law, § 85.60.

7. Appellant's next contention is that the evidence does not support the Board's finding of disability. Appellant extracts from the record a volume of evidence assertedly negating the Board's finding. Appellee, on the other hand, points to evidence assertedly authorizing the finding. Under the "any evidence" test, that is enough. We will not reweigh the conflicting evidence, but only ensure there was some evidence to support the findings below. See Division 2, supra.

8. Appellant's final contention is that it is entitled to a credit for all benefits received by appellee under the Tennessee award. We agree. Code Ann. § 114-411 expressly mandates that this be done. We also find that the Board's award, taken together with § 114-411, provides for the credit.

Appellant further argues that the award is deficient in that it makes no provision for benefits authorized but not yet received by appellee under Tennessee law. This argument has no merit. Code Ann. § 114-411 prevents appellant from being subject to double liability and the Board is without authority to execute an award in contravention of this statute. We see no need for such a proscription to be written into the Boards award.

*Judgment affirmed. Deen, P.J., and Sognier, J., concur.*

DECIDED SEPTEMBER 16, 1982 –
REHEARING DENIED OCTOBER 6, 1982 – CERT. APPLIED FOR.

Workers' compensation. Fulton Superior Court. Before Judge McKenzie.

*David M. Holliday, Alfred B. Adams III, Daniel A. Angelo,* for appellant.

*John W. Winborne III, Noble E. Pepper,* for appellee.

STATE BOARD OF WORKERS' COMPENSATION
1800 Peachtree Street, N.W.
ATLANTA, GEORGIA 30309

NOTICE OF AWARD

CLAIM NO. 255-40-7275 CASE OF Lawrence G. Warren
INJURY DATE 10-20-78 DATE August 6, 1980

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Lawrence G. Warren — Employee/Claimant
630 Spring Oaks Boulevard
Altamonta, Florida

Roadway Express — Employer/Self-Insured
1077 George Boulevard
P.O. Box 471
Akron, Ohio 44309

Noble E. Pepper — For Employee/Claimant
5151 Lebanon Road
Old Hickory, Tennessee 37138

John W. Winborne, III — For Employee/Claimant
3100 Peachtree Summit
Atlanta, Georgia, 30308

Alfred B. Adams, III — For Defendants
1515 Peachtree Center South
225 Peachtree Street, N.E.
P.O. Box 57006
Atlanta, Georgia 30303

## STATEMENT AND FINDINGS OF FACT

At the request of the claimant, a hearing came on before the undersigned on March 11, 1980 to determine all Title 114 issues with respect to an injury sustained by the claimant on October 20, 1978. The defendants filed a notice to controvert on November 13, 1979. The parties agreed to the following stipulations: the employer is a qualified self-insurer in Georgia, generally subject to the Workers' Com-

pensation Act; on October 20, 1978 the claimant was in the general employ of the employer; he was then earning an average weekly wage of $586.73; on October 20, 1978 the claimant did sustain an accident arising out of his employment with the employer; the employer received timely notice thereof; at the time of the accident the claimant was a resident of Tennessee, working out of Nashville; the accident happened in Indiana; the claimant has been paid compensation under Tennesee law from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week.

The evidence on the hearing showed the following undisputed facts. The claimant filled out an employment application with Roadway Express, employer, on March 7, 1963. He began working for them as an over-the-road truck driver on March 25, 1963 in Atlanta, Georgia. The claimant was on extended sick leave from 1967 until 1971 because of an on the job trucking accident. He received Georgia Workers' Compensation benefits during that time.

While the claimant was disabled, his employer's operation in Atlanta changed from a two man to a single operation, resulting in a decrease in the number of drivers working out of Atlanta. The claimant was given a choice of different terminals to transfer to because Roadway Express cut the board in Atlanta from 343 to 110 drivers. The drivers worked strictly on seniority and at that time the claimant was approximately number 320 on the list. The claimant did have the option of remaining in Atlanta; however, if a driver's seniority did not carry him to one of the terminals he chose, he would be forced to take a layoff letter which limited to two years the time during which the employer would have to call an employee back to work.

Fearing a layoff letter if he chose to remain in Atlanta, the claimant listed Nashville, Tennessee as his first choice and his seniority carried him there.

In 1971 the claimant returned to work for Roadway in Nashville and never lost any of his seniority. He once more worked as an over-the-road truck driver and filled out no new employment application. Upon his return the claimant's first run was mostly back to Atlanta where his family was still living. For the next four years the claimant had a run to Columbia, Tennessee and thereafter he bid for a Chicago run which he kept until his accident on October 20, 1978. On that date he was rear-ended and thrown from his truck. Subsequently the parties involved entered into an agreement whereby the claimant elected to come under the Workers' Compensation Laws of Tennessee. The claimant received benefits pursuant to this agreement from October 21, 1978 through October 12, 1979. Termination of these benefits was based on a medical report of Dr. Raymond Gilmer, Jr., dated October 5, 1979, wherein he stated that the claimant had a healed fracture of his dorsal spine which had been injured in a prior accident. Dr. Gilmer advised the claimant that there was nothing more than he could do for him and that the claimant should discontinue all medications, wearing a back brace, and using a nerve stimulator.

Following his accident in October of 1978, the claimant was hospitalized in Dyer, Indiana where he was told by Dr. Perez that he had a concussion and swelling of the brain. Troubled by severe headaches, the claimant remained in the hospital for four weeks. Thereafter he was transferred to Nashville under the care of his family physician, Dr. Thomas Miller. The claimant received active medical treatment and/or examinations from Doctors Thomas

Huber, William Schmeling, Arthur Cushman, Gerry Hodges, Don Gaines, Raymond Gilmer, Armond Zilioli, William Eckbert, and Henry Van Twyver, Ph.D. It was the consensus of these physicians that a majority of the claimant's problems were not anatomically related to his low back but instead were psychological in nature. Several doctors noted that prior to the claimant's accident on October 20, 1978, he had been involved in several other motor vehicle accidents which had caused him psychological distress.

The first issue which must be addressed is whether or not the Georgia State Board of Workers' Compensation has jurisdiction over this claim. Code Section 114-411 controls. Therein it states that the Georgia Board has jurisdiction over a claim arising out of an accident occurring out of state if the contract of employment was made in this state and if the employer's place of business is in Georgia, provided that the contract is not expressly for service exclusively outside of the state.

Under the facts of this case, as set forth above, the contract of employment was entered into between the parties when the claimant initially went to work for the employer in 1963 in the State of Georgia. This contract was not for work exclusively outside the state. Roadway Express stipulated that it was a qualified self-insurer in Georgia, generally subject to its Workers' Compensation Act. It therefore may be inferred that the employer had a place of business in this state.

The second issue which must be addressed is whether or not the claimant's election and actual receipt of compensation benefits under Tennessee law from October 21, 1978 through October 12, 1979 bars him from seeking a second recovery in Georgia. The employer contends that

he is so barred by conflict of laws, principles and the Full Faith and Credit Clause of the United States Constitution. Under Tennessee law a claimant who may be eligible for compensation benefits under the laws of two or more states makes an irrevocable election to proceed under one state's laws when he voluntarily begins a proceeding in one state and receives benefits under that state's laws. However, on June 27, 1980 the United States Supreme Court held that a state has no legitimate interest within the context of our federal system in preventing another state from granting a supplemental compensation award when that second state would have had the power to apply its workers' compensation law in the first instance. The Court added that the Full Faith and Credit Clause should not be construed to preclude successive workers' compensation awards. *Thomas v. Washington Gas Light Co.*, ____ U.S. ____, 48 L.W. 4930, 4937. Because the Georgia Board has the power to apply its Workers' Compensation Law to this claim, Tennessee law cannot preclude the granting of a supplemental compensation award in the State of Georgia.

The final issue which must be addressed is whether or not the claimant remains disabled as a result of the injuries he sustained on the job in October of 1978. His compensation benefits were terminated on October 12, 1979, based upon a medical report submitted by Dr. Raymond Gilmer, Jr., dated October 5, 1979. It is stated therein that the claimant can return to work and needs to take only Bufferin or aspirin for his pain.

In a report dated October 15, 1979, Dr. Armand Zilioli, associated with the Central Florida Orthopaedic Group, pointed out that in 1967 the claimant had a similar trucking accident injuring his back and his head. It took about four years to clear up the claimant's headaches, requiring psychiatric care at that time, including hospitalization. It

was Dr. Zilioli's impression that with such a pre-existing psychiatric history, the claimant was probably suffering from chronic pain syndrome. On May 1, 1980, the claimant saw Dr. Zilioli with complaints of worsening headaches with pain radiating down the middle of his back into the lower back area, and out both legs. Dr. Zilioli thought that the majority of these complaints were not anatomically related to the claimant's lower back, but instead were psychological in nature.

Dr. Thomas Miller, the claimant's family physician, stated in his deposition of December 6, 1979, that he first saw the claimant in June of 1977, prior to the accident here in question and for a totally unrelated condition. Because of the injuries he sustained in October of 1978, the claimant returned to Dr. Miller on October 26, 1978. By November the claimant continued to complain about severe headaches at which time Dr. Miller stated that it was getting relatively far away from the date of the accident for the claimant to still have post traumatic pain. Therefore, Dr. Miller began to wonder whether or not the pain was related to the injury itself or was beginning to become a muscular tension headache. It came to the doctor's attention that the claimant had been involved in two previous accidents resulting in the death of two people. This had created created a chronic anxiety state for the claimant which continued to worsen. It was Dr. Miller's belief that the claimant's accident on October 20, 1978 shook him up and caused old headaches to return. In his opinion, the pain the claimant was suffering was a result of this accident because prior to October of 1978 the claimant had never complained to Dr. Miller about headaches; after the accident he never had a day without one.

Since portions of claimant's exhibit number four are based on information conveyed to Henry Van Twyver, Ph.D.,

by other persons and since it is not possible for the undersigned to determine which portions are not based on hearsay, defendant's objection to this exhibit is hereby sustained and the same has not been considered in reaching this decision.

Based upon all of the evidence adduced, I find that:

1. On October 20, 1978, the claimant was in the general employ of Roadway Express at an average weekly wage of $586.73.

2. On the aforesaid date the claimant sustained an injury by accident arising out of and in the course of his employment. The claimant became immediately disabled because of the aforesaid accident and has remained continuously disabled since. The claimant is in need of further medical care, possibly including treatment by a psychiatrist.

3. The Georgia State Board of Workers' Compensation does have jurisdiction over this claim.

4. The claimant's election and receipt of compensation benefits under Tennessee law does not preclude the granting of a supplemental award by the Georgia Board.

5. The claimant has received income benefits under the law of Tennessee for disability suffered by him on account of the accident here in question from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week.

WHEREFORE, based upon the above and foregoing findings of fact and the conclusions of law applicable

thereto, Roadway Express, employer/self-insured, is hereby ordered to pay to Lawrence G. Warren, employee, compensation at the rate of $110.00 per week beginning October 20, 1978, and to continue until such time as the claimant shall undergo a change of condition for the better or until further order of this Board. The defendants are authorized to take credit against the foregoing award for all income benefits paid to the claimant under Tennessee law on account of this accident.

The defendants are further directed to continue to furnish to or on behalf of the claimant all such medical, surgical, hospital, psychiatric or other care as may be reasonably required in the future to effect a cure or give relief to the claimant's injury resultant condition.

All accrued compensation is due and payable immediately upon receipt of this award.

AND IT IS SO ORDERED, this the 6th day of August, 1980.

STATE BOARD OF WORKERS' COMPENSATION

[signed] H. Grady Almand, Jr.
H. GRADY ALMAND, JR.
ADMINISTRATIVE LAW JUDGE

HGA:sf

APPENDIX B

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const. art. IV, §1**

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

**U.S. Const. amend. XIV, §1**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411)**

Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provid-

ed, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title.

**Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404)**

While the disability to work resulting from an injury is total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than $135.00 per week nor less than $25.00 per week, except that when the weekly wage is below $25.00 the employee shall pay a weekly benefit equal to the average weekly wage.

**Tenn. Code Ann. §50-914**

When the injury or death for which compensation is payable under the Workmen's Compensation Law was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured workman, or his dependents, shall have the right to take compensation under such law, and such injured workman, or those to whom his right of action survives at law, may pursue his or their remedy by proper action in a court of competent jurisdiction against such other person. In the event of a recovery from such other person by the workman, or those to whom his right of action survives, by judgment, settlement, or otherwise, the attorney representing such injured workman, or those to whom his right of action survives, and effecting said recovery, shall be entitled to a reasonable fee for his services, and said attorney shall have a first lien therefor against said recovery; provided, however, that if the

employer has engaged other counsel to represent the employer in effecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion said reasonable fee between the attorney for the workman and the attorney for the employer, in proportion to the services renderd.

In event of such recovery against such third person by the workman, or by those to whom his right of action survives, by judgment, settlement, or otherwise, and the employer's maximum liability for workmen's compensation under chapters 9 through 12 of this title has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery and the employer may intervene in any action to protect and enforce such lien. Provided, further, that in event said net recovery by the workman, or by those to whom his right of action survives, exceeds the amount paid by the employer, and the employer has not, at said time, paid and discharged his full maximum liability for workmen's compensation under chapters 9 through 12 of this title, the employer shall be entitled to a credit on his future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the employer. Provided further, however, that in event the workman, or those to whom his right of action survives, effects a recovery, and collection thereof, from such other person, by judgment, settlement, or otherwise, without intervention by the employer, the employer shall, nevertheless, be entitled to a credit on his future liability for workmen's compensation, as it accrues under chapters 9 through 12 of this title, to the extent of said net recovery.

Such action against such other person by the injured workman, or those to whom his right of action survives, must be instituted in all cases within one (1) year from the

date of injury. Failure on the part of the injured workman, or those to whom his right of action survives, to bring such action within said one (1) year period shall operate as an assignment to the employer of any cause of action in tort which the workman, or those to whom his right of action survives, may have against any other person for such injury or death, and such employer may enforce same in his own name or in the name of the workman, or those to whom his right of action survives, for such employer's benefit, as such employer's interest may appear, and the employer shall have six (6) months after such assignment within which to commence suit.

**Tenn. Code Ann. §50-917**

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this law had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of such injury: (a) the employment was principally localized within this state, or (b) the contract of hire was made in this state.

**Tenn. Code Ann. §50-1005**

(a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-1004, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

(b) The total amount of compensation payable under this chapter shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case, exclusive of medical, hospital and funeral benefits. Compensation shall be paid promptly, the first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or his dependents semimonthly. Any employer or his insurance carrier who fails to pay compensation as herein provided shall suffer a penalty of six percent (6%) on any unpaid installments.

(c) Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the director, on a form prescribed by him, that the payment of income benefits has begun or has been stopped or changed. Failure to file such notice shall be a dmisdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00).

(d) If payments have been made without an award, and the employer subsequently elects to controvert his liability, notice of controversy shall be filed with the director within fifteen (15) days of the due date of the first omitted payment. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00). In such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall

the acceptance of compensation by the employee be considered a binding determination of his rights.

**Tenn. Code Ann. § 50-1007**

The following is the schedule of compensation to be allowed employees under the provisions of the Workers' Compensation Law:

(a) TEMPORARY TOTAL DISABILITY. For injury producing temporary total disability, sixty-six and two-thirds percent (66⅔%) of the average weekly wages as defined in this chapter, subject to a maximum compensation of one hundred thirty-six dollars ($136) per week and a minimum of fifteen dollars ($15.00) per week; provided that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; and provided further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages, but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. Where a fractional week of temporary total disability is involved the compensation for each day shall be one seventh (1/7) of the amount due for a full week.

(b) ***

(c) PERMANENT PARTIAL DISABILITY. In case of disability partial in character but adjudged to be permanent, there shall be paid to the injured employee, in addition to the benefits provided by § 50-1004, the following: (1) sixty-six and two-thirds percent (66⅔%) of his average weekly wages for the period of time during which he suffers temporary total disability on account of the injury, the same being subject to the same limitation as to minimum and

maximum as provided in subsection (a) of this section; and (2) in addition to the foregoing he shall receive sixty-six and two-thirds percent (66⅔%) of his average weekly wages in accordance with the schedule hereinafter set out, provided, that the compensation paid the injured employee for the period of temporary total disability and temporary partial disability shall not be deducted from the compensation to be paid under said schedule.

For the loss of a thumb, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty-five (35) weeks.

For the loss of a second finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty (30) weeks.

For the loss of a third finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, sixty-six and two-third percent (66⅔%) of average weekly wages during fifteen (15) weeks.

For the loss of first phalange of the thumb, or of any finger, which shall be considered equal to the loss of one half (½) of such thumb, or finger, compensation shall be paid at the prescribed rate during one half (½) of the time specified above for such thumb or finger.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for

more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the great toe, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty (30) weeks.

For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one half (½) of such toe, and compensation shall be paid at the prescribed rate during one half (½) the time specified above for such toe.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an arm, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during two hundred (200) weeks.

For the loss of a foot, sixty-six and two-thirds percent (66⅔%) of average weekly wages for one hundred and twenty-five (125) weeks.

For the loss of a leg, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during two hundred (200) weeks.

Compensation for an arm or leg, if amputated above the wrist joint or above the ankle joint shall be for the loss of the arm or leg.

For the loss of an eye, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred (100) weeks.

For the complete permanent loss of hearing in both ears, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and a leg, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred (300) weeks.

For the loss of two (2) arms, other than at the shoulder, sixty-six and two-thirds percent (66⅔%) of average weekly wages during four hundred (400) weeks.

For the loss of two (2) hands, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of two (2) legs, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of two (2) feet, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and the other hand, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) hand and one (1) foot, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) leg and one (1) hand, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and one (1) foot, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and one (1) leg, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the total and permanent loss of the sight of both eyes, or the loss of both arms at the shoulder, or complete and permanent paralysis, or total and permanent loss of mental faculties, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

The total amount of compensation payable in subsection (c) shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case.

Pay for concurrent injuries. When an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one member, for which members compensation are provided in the specific schedule and in subsection (e) below.

In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by said schedule provided shall be in lieu of all other compensation.

Permanent partial disability in certain cases. In cases of permanent partial disability due to injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of injury to the members bears to its total loss. If an injured employee refuses employment suitable to his capacity, offered to or procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless at any time in the opinion of the county executive of the county of his residence such refusal is justifiable. All compensation provided in clause (c) of this section for loss to members, or loss of use of members, is subject to the same limitations as to maximum and minimum as are stated in clause (a).

For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect his employability in the employement in which he was injured or other employment for which he is then qualified sixty-six and two-thirds percent (66⅔%) of the average weekly wages for such period as the court may determine, not exceeding two hundred (200) weeks. The benefit herein provided shall not be awarded in any case where the injured employee is compensated under any other provision of the Workers' Compensation Law.

All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. Compensation for such permanent partial disability shall be subject to the same limitations as to maximum and minimum as provided in subsection (a). If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from said subsequent injury. The benefits provided by this paragraph shall not be awarded in any case where benefits for a specific loss are otherwise provided in this title.

(d) PERMANENT TOTAL DISABILITY. For permanent total disability as defined in subsection (e), sixty-six and two-thirds percent (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of one hundred thirty-six dollars ($136) per week and a minimum of fifteen ($15) per week; provided, that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; provided, further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. This compensation shall be paid during the period of such permanent disability, not exceeding five hundred and fifty (550) weeks, but

in all such cases drawing more compensation than fifteen dollars ($15.00) per week, the payments after the first four hundred (400) weeks shall be reduced to fifteen dollars ($15.00) per week for the remainder of the five hundred fifty (550) weeks while the permanent total disability continues, payments to be made at the intervals when the wage was payable, as nearly as may be. The total amount of compensation payable under this subsection shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case; provided, however, that in case an employee who is permanently and totally disabled becomes an inmate of a public institution, and provided further, that if no person or persons are wholly dependent upon him, then the amounts falling due during the lifetime of such employee shall be paid to him or to his guardian, if non compos mentis, to be spent for the ward's benefit; such payments to cease upon the death of the employee.

(e) PERMANENT TOTAL DISAIBLITY DEFINED. When an injury not otherwise specifically provided for in this chapter as amended, totally incapacitates the employee from working at an occupation which brings him an income, such employee shall be considered "totally disabled," and for such disability compensation shall be paid as provided in subsection (d) hereof, provided that the total amount of compensation payable hereunder shall not exceed fifty-four thousand four hundred dollars ($54,400) exclusive of medical and hospital benefits.